

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2011 DEC 22 P 4: 37

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

SAHR ETORM BERNARD M'BAYO,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE, AND DOES 1
THROUGH 10,

Defendants.

Case No. 1:11 CV 1389
LMB/IDD

PETITION FOR A WRIT OF MANDAMUS TO COMPEL
ADMINISTRATIVE ACTION BY THE U.S. DEPARTMENT OF STATE

Plaintiff Sahr Etorm Bernard M'Bayo (hereinafter "Sahr" or "Plaintiff"), by and through the undersigned counsel, hereby files the following Petition for a Writ of Mandamus to Compel Administrative Action by the U.S. Department of State, and further states:

NATURE OF CASE

1. This action is brought for a hearing to decide Sahr's Request for Documentation and Information Pursuant to the Freedom of Information Act ("FOIA") due to the Defendant's failure to adjudicate the request in violation of 22 Code of Federal Regulations §171, et seq. Plaintiff's FOIA was served on or about September 04, 2009, and has been pending for a period exceeding 830 days. The action is brought to compel Defendant to take action on Plaintiff's FOIA.

PARTIES

2. Plaintiff Sahr Etorm Bernard M'Bayo is a resident of Arlington County, Virginia, and submitted his FOIA to the U.S. Department of State on or about September 03, 2009. **Exhibit A.** The FOIA was received on or about September 04, 2009.

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3. Defendant United States Department of State (hereinafter "DOS" or "State Department") is a department of the Federal Government and generally charged with supervisory authority over all operations of U.S. foreign embassies and consulates, including the granting of visas and passports under 22 C.F.R. § 1, et seq. Does 1 through 10 are unknown DOS agents and/or employees which were tasked with responding to Plaintiff's FOIA.

JURISDICTION AND VENUE

4. This is an action for a writ of mandamus and injunctive relief in accordance with the provisions of Title 28, U.S.C. § 2201 and §2202 and is brought for the purpose of determining a question of actual controversy between the parties as more fully explained in this Petition.

5. This Court has jurisdiction to hear this Petition and the claims stated herein by virtue of 28 U.S.C. §§ 1331, 1361, and 2201 because this is a federal mandamus action brought to compel Defendant and its agents and employees to perform its statutory duties owed to the Plaintiff. This Court has additional jurisdiction by virtue of the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, as Plaintiff seeks judicial review of the inaction of Defendant and its agents.

6. Venue is proper in the District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(e), in that it is the district in which the Plaintiff resides and no real property is involved in this action.

EXHAUSTION OF REMEDIES

7. The Plaintiff, through counsel, has repeatedly requested that the Defendants make a final decision on his pending FOIA. These requests were made telephonically and in writing, and copies of Plaintiff's written requests are enclosed herein as **Exhibit B**.

8. Plaintiff's repeated requests have been meaningless in resolving the outstanding FOIA. Despite Defendant's repeated promises, over the course of the past two years, to respond "soon"

to the FOIA, Plaintiff is now convinced that Defendant's past and continued conduct only serve to evidence Defendant's intent to indefinitely delay and defer responding to the FOIA.

9. The Plaintiff has exhausted his administrative remedies, to no avail, and his only recourse is to file the instant case before this Court.

FACTS AND CAUSE OF ACTION

10. Paragraphs 1 through 10 are hereby incorporated as through fully restated herein.

11. Plaintiff was born on January 29, 1966, at Sibley hospital in the District of Columbia to Eya and Beatrice M'Bayo. Plaintiff is a resident of Arlington, Virginia and is a devoted husband and father.

12. Plaintiff's father, Eya M'Bayo, a citizen and native of Ghana was in the employ of the Embassy of Ghana and allegedly present in the United States as a diplomat.

13. Since the time of his birth, Plaintiff has lived in the United States of America as a native and citizen of the United States. He has registered to vote, applied for and received multiple U.S. passports for international travel, and contributed to governmental agencies such as federal and local taxation agencies, and the social security administration since the age of nineteen.

14. On or about September 25, 2006, Plaintiff filed a routine application to renew his U.S. passport for international travel. On or about October 25, 2006, Plaintiff was flabbergasted when the Department of State informed Plaintiff that, according to their records, Plaintiff was not a U.S. Citizen as his father maintained diplomatic status at the time of Plaintiff's birth.

15. Plaintiff through counsel, filed a Request for Information under the Freedom of Information Act, pursuant to 22 C.F.R. § 171, in an attempt to obtain pertinent documents and information relating to the Department of State's position and Plaintiff's status as a U.S. citizen. This request was received by the U.S. Department of State on or about September 04, 2009.

16. As evidenced in the enclosed correspondence, Defendant has conducted the initial investigation and located the requisite information and documentation to adjudicate Plaintiff's FOIA request, but the matter has been "under review" since at least April 27, 2010. **Exhibit B.**

17. Although Defendant over the years has continually promised to prepare a response to the FOIA "soon," Defendant has continually failed to do so. In fact, on December 01, 2011, Defendant has now promised to respond "around April 2012," but has declined to state why it requires over two years to respond from the latest date that it has located the requested documents. Given Defendant's past failures to adhere to its promises to respond, Plaintiff can only assume that the recent April 2012 deadline is merely another illusory promise on Defendant's behalf made in order to further delay and indefinitely defer responding to the FOIA.

18. Despite Defendant's prior promises, Plaintiff's FOIA remains adjudicated in excess of 830 days, when such requests are normally processed within 30-120 days. Thus, Defendants have failed in their statutory duty adjudicate the request within a reasonable time.

19. In addition, Defendants have violated the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, as they are unlawfully withholding action on the Plaintiff's FOIA and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

20. Defendants' delay in responding is arbitrary, unlawful, and violates Plaintiff's due process rights. Defendants have willfully and unreasonably delayed and refused to adjudicate Plaintiff's FOIA, thereby depriving Sahr of information potentially leading to the rightful re-issuance of his U.S. passport, if not clarifying his U.S. citizenship status.

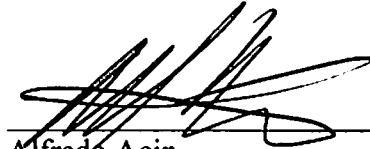
21. As a result of Defendants' delay, Plaintiff has incurred significant costs and expenses, including airline travel, hotel stays, long-distance telephone charges, and now significant attorney's fees; in effect, the lives of him and his family are on-hold due to Defendants' inaction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sahr Etorm Bernard M'Bayo respectfully prays:

- A. That the Court order Defendant to immediately respond to Plaintiff's FOIA;
- B. In the alternative, that the Defendant be cited to appear herein and that, upon due consideration, the Court enter an order mandating a time certain to respond to Plaintiff's FOIA;
- C. That the Court award Plaintiff his reasonable costs and attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504; and
- D. That this Court grant such other and further relief as this Court deems proper under the circumstances.

Respectfully Submitted,



Alfredo Acin

Virginia Bar Number: 76445

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